

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48910, Subdivision (a), as added by Statutes 1977, Chapter 965 and amended by Statutes 1983, Chapter 498;

Filed on March 9, 1994;

By the San Diego Unified School District,
Claimant.

Nos. 04- PGA-18 (CSM-4458)

Pupil Classroom Suspension: Counseling

ORDER TO SET ASIDE PARAMETERS
AND GUIDELINES

(Adopted on December 9, 2005)

ORDER TO SET-ASIDE PARAMETERS AND GUIDELINES

In 1995, the Commission on State Mandates determined that the *Pupil Classroom Suspension: Counseling* program (Ed. Code, § 48910, subd. (a)) imposed a reimbursable mandate on school districts by requiring school counselors or school psychologists to attend the classroom suspension parent-teacher conferences whenever practicable.

Statutes 2004, chapter 890 (Assem. Bill No. 2855, § 10) amended Education Code section 48910, subdivision (a) and became operative and effective on January 1, 2005. This amendment made the requirement for school counselors or school psychologists to attend the classroom suspension parent-teacher conference discretionary.

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines be amended because the Legislature made this program optional.

Discussion

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.¹ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.).

¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

The test claim statutes, as amended by Statutes 2004, chapter 890 (Assem. Bill No. 2855, § 10), do not mandate school districts to perform an activity or task. As amended, there is no express requirement for school counselors or school psychologists to attend the classroom suspension parent-teacher conferences. Rather, the plain language of Education Code section 48910, subdivision (a) now states, “[i]f practicable, a school counselor or a school psychologist *may* attend the conference.” (Emphasis added.)²

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.³ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁴

Thus, because school districts are no longer required to have school counselors or school psychologists attend the classroom suspension parent-teacher conferences, compliance with the test claim statute is within the discretion of the school district and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Therefore, the Commission sets aside the attached parameters and guidelines for the *Pupil Classroom Suspension: Counseling* program, effective January 1, 2005.

Paula Higashi, Executive Director

Date

Attachment: Parameters and Guidelines

² Education Code section 75 defines “shall” as mandatory and “may” as permissive.

³ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.